MT LEGISLATIVE HISTORY

Chapter 463 1991

Bill H 209 S _____ Original bill & hist. ___C

H. Committee on Business & Economic Development S. Committee on Business & Industry

Hearing Date(s)			Hearing Date(s)		
	Jan 21	✓C		Feb 12	✓C
	_____	___C		Mar 18	✓C
	_____	___C		_____	___C
	_____	___C		_____	___C
Date Out	Jan 21	✓C		Mar 18	✓C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

2/08	HEARING		
2/14	COMMITTEE REPORT—BILL CONCURRED		
2/15	2ND READING CONCURRED	49	0
2/16	3RD READING CONCURRED	49	0
	RETURNED TO HOUSE		
2/20	SIGNED BY SPEAKER		
2/20	SIGNED BY PRESIDENT		
2/20	TRANSMITTED TO GOVERNOR		
2/22	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 43	EFFECTIVE DATE: 10/01/91	

HB 208 INTRODUCED BY FORRESTER, ET AL.
ELIMINATE APPROVAL OF DEPARTMENT OF COMMERCE FOR DESTRUCTION OF CERTAIN RECORDS

1/16	INTRODUCED		
1/16	REFERRED TO EDUCATION & CULTURAL RESOURCES		
1/16	FIRST READING		
1/23	HEARING		
1/24	COMMITTEE REPORT—BILL PASSED		
1/24	PLACED ON CONSENT CALENDAR		
1/26	3RD READING PASSED	85	2
	TRANSMITTED TO SENATE		
1/28	FIRST READING		
1/28	REFERRED TO EDUCATION & CULTURAL RESOURCES		
2/04	HEARING		
2/19	TABLED IN COMMITTEE		

HB 209 INTRODUCED BY WALLIN, ET AL.
PERFECT LIEN ON VEHICLE ON DATE LIEN NOTICE DELIVERED TO COUNTY TREASURER

1/16	INTRODUCED		
1/16	REFERRED TO BUSINESS & ECONOMIC DEVELOPMENT		
1/16	FIRST READING		
1/21	HEARING		
1/21	COMMITTEE REPORT—BILL PASSED		
1/22	FISCAL NOTE REQUESTED		
1/23	2ND READING PASSED	97	0
1/25	3RD READING PASSED	96	0
	TRANSMITTED TO SENATE		
1/25	REFERRED TO BUSINESS & INDUSTRY		
1/26	FIRST READING		
1/28	FISCAL NOTE RECEIVED		
1/29	FISCAL NOTE PRINTED		
2/12	HEARING		
3/18	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/20	2ND READING CONCURRED	48	0
3/21	3RD READING CONCURRED	49	0
	RETURNED TO HOUSE WITH AMENDMENTS		
4/08	2ND READING AMENDMENTS CONCURRED	88	2
4/09	3RD READING AMENDMENTS CONCURRED	96	2
4/15	SIGNED BY SPEAKER		
4/15	SIGNED BY PRESIDENT		
4/15	TRANSMITTED TO GOVERNOR		
4/17	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 463	EFFECTIVE DATE: 10/01/91	

HB 210 INTRODUCED BY SPRING, ET AL.
ALLOW CITY TO COLLECT UNPAID WATER OR SEWER BILL AS DEBT IN COMPETENT COURT

1/16	INTRODUCED		

other places. It may not be in precisely the same form that this bill details, but the information is available. Additionally, there is a model bill which is coming out of the NAIC, the National Association of Insurance Commissioners, which provides for a more uniform method of collecting this data. One of their primary objections to HB 241 is not that the data is being collected, but the fact that it is being done piecemeal, state by state, rather than in some uniform method so that it can be analyzed effectively and completely. This calls for information that does not produce any meaningful conclusions.

Closing by Sponsor:

REP. WHALEN closed by saying the main thing he wanted to leave with the Committee is that this bill came out of the Interim Committee in 1986 to deal with liability issues. This is something that was studied by that Committee and was a bill that was proposed to be drafted for this Legislature. It is not anything thrown together on his own. With the exception of the modification removing all the money out of it. Secondly, there is a similar statutory act on the question of professional liability. He didn't think it would put any great burden on these carriers to provide this information. Oftentimes they would have you believe compiling all this information is done by hand. All of you know that once you have the data base, you have the problem solved. You can call it up with the punch of a button.

HEARING ON HOUSE BILL 209

Presentation and Opening Statement by Sponsor:

REP. NORM WALLIN, HD 78, Gallatin County, sponsor, has spent most of his life in the automobile business. This bill ties in with his experience in that business. HB 209 is an act providing that a security interest in a motor vehicle is perfected on the date the lien notice is delivered to the county treasurer, and amends Section 61-3-103,MCA. Under present law, after the application for title papers are made up for the sale and purchase of an automobile to transfer the application for the new title, and the lien if there is one, is attached to it, it should be at the county treasurer's office within four days. The buyer has an additional twenty days time in which to go to the courthouse to sign the documents necessary to obtain his title and license plates and pay for the transfer, thereby perfecting the lien. HB 209 addresses what has and can happen adversely between the four days when the papers are in the courthouse and the twenty days in which the buyer has to perfect that lien and transfer his title. This has been running along smoothly. The federal bankruptcy law that many people have become familiar with requires the lien to be perfected in ten days. There is a lag in time between the four days and the twenty days, and in many cases the new owner doesn't sign the papers within the twenty days. The treasurer doesn't return those papers to the dealer until at least thirty days have

passed. A lot of things can happen to that lender's equity or interest in the vehicle he is financing. The purpose for this bill is to tighten up that period and say at the time the dealer or the seller takes the papers to the county treasurer's office, if there is a lien, at that time the lien is perfected as against any other claims that might come up against that automobile.

Proponents' Testimony:

John Cadby, Montana Bankers Association, explained HB 209 is the result of the bankruptcy court ruling in Butte last year and others since. The federal law says you have to perfect a lien within ten days of receipt of the documents. Now it takes too long to perfect a lien on a motor vehicle. **EXHIBIT 6** is the actual summary of a case wherein the credit union had a $13,000 loan against a 1989 Mazda. The application for title and lien documents were delivered to the county on March 1, title wasn't issued until August 31, the bankruptcy court ruled the car now belonged to the trustee, so the credit union took a $13,000 loss through no fault of its own; simply due to paperwork. Under HB 209 the lien notice would be taken to the county treasurer who gives the lender a receipt; the lien is perfected at that point in time. It should solve most of the problems or prevent these problems from arising again. He gave the Committee copies of a court ruling **EXHIBIT 7** he made reference to in his testimony above and in **EXHIBIT 6.**

Bob Pyfer, Vice President of the Montana Credit Unions League, said this bill has been accurately presented and they are in support of it. He referred to bankruptcy theories. One is a hypothetical lien creditor theory in the bankruptcy law, and there is also a preference theory. Suffice it to say that a lender who does everything right and in good faith and with all due diligence can lose their lien in a bankruptcy situation. The other important point here is that this does not in any way affect the debtor. The debtor does not benefit from the bill, nor does the debtor receive any detriment from this bill. The ones who gain a windfall because of this quirk of the juxtaposition between our bankruptcy laws and our motor vehicle lien laws are the bankruptcy trustees and the unsecured creditors because when the liens are voided by the trustees the asset acquired simply goes into the pool of assets to be distributed among all unsecured creditors. Trustees have a distinct incentive to avoid liens in any way they can because they are paid a percentage of the amount they can distribute to unsecured creditors. This is not a creditor/debtor bill per se, it is simply a way of avoiding a rather grievous injustice in the bankruptcy laws as between the various creditors.

Daryll (Bud) Schoen, Registrar of Motor Vehicles in Deer Lodge in the Department of Justice Motor Vehicle Division, recognizing the problem that Montana lenders have in perfecting liens on motor vehicles, supports this bill. He will answer questions if needed.

Steve Turkiewicz, Executive Vice President of Montana Auto Dealers Association, a trade association representing 150 Montana new car and truck dealers, supports this bill. You heard the bankruptcy ruling. When someone buys a car and borrows money the lien against that vehicle is not perfected until the title is issued, according to Montana law. If everything works right, it takes thirty days to get a title in Montana. The dealer has four days to get the paperwork to the courthouse to record the documents; the buyer of the vehicle has twenty days to get in to the courthouse and sign those papers which are then transmitted to Deer Lodge. Deer Lodge works its magic on them and out comes a title. Montana law says the lien is not perfected until the title is issued, so that happens in a minimum of thirty days. The federal bankruptcy law says you don't have security interests in that vehicle unless you perfect a lien in ten days. That is where the problem is. Besides the bankruptcy concern there is also enforcement of recourse by our lenders who deal with banks, savings and loans, credit unions, captive credit companies, General Motors Acceptance Corporation. All those require the dealer to get that lien perfected, and the recourse against the dealer is there until such time as that lien is perfected, and it is very disconcerting to be a car dealer who sold a car thirty-forty days ago and get a letter from General Motors Acceptance Corporation or First Bank saying the lienings or titles have not been issued on the fifteen cars you sold a month ago, please send us a check for $85,000! It is the responsibility of the dealers to get that work done, and it is the responsibility of the lenders to get their work done. There is a mismatch between the federal bankruptcy law and Montana law. HB 209 asks this to be changed. When the dealers have met their obligations and the lien is perfected, they maintain their security interests in the vehicle.

Michael Varone, Vice President of the Norwest Bank and past Chairman of the Montana Bankers Association Retail Committee, supports this bill and will answer questions regarding titles.

Opponents' Testimony: None

Questions From Committee Members: None

Closing by Sponsor:

REP. WALLIN closed. There is no cost to anyone involved. The proper paperwork establishes a date the lien is perfected and the title can be obtained.

EXECUTIVE ACTION ON HB 209

Motion/Vote: **REP. CROMLEY moved HB 209 DO PASS.** Motion carried unanimously by voice vote.

HOUSE OF REPRESENTATIVES

BUSINESS AND ECONOMIC DEVELOPMENT COMMITTEE

ROLL CALL

DATE Jan. 21, 1991

NAME	PRESENT	ABSENT	EXCUSED
REP. JOE BARNETT	✓		
REP. STEVE BENEDICT	✓		
REP. BRENT CROMLEY	✓		
REP. TIM DOWELL	✓		
REP. ALVIN ELLIS, JR.	✓		
REP. STELLA JEAN HANSEN	✓		
REP. H.S."SONNY" HANSON	✓		
REP. TOM KILPATRICK	✓		
REP. DICK KNOX	✓		
REP. DON LARSON	✓		
REP. SCOTT MCCULLOCH	✓		
REP. BOB PAVLOVICH	✓		
REP. JOHN SCOTT	✓		
REP. DON STEPPLER	✓		
REP. ROLPH TUNBY	✓		
REP. NORM WALLIN	✓		
REP. SHEILA RICE, VICE-CHAIR	✓		
REP. BOB BACHINI, CHAIRMAN	✓		

1-21-91

T.O B

HOUSE STANDING COMMITTEE REPORT

January 21, 1991

Mr. Speaker: We, the committee on Business and Economic Development report that House Bill 209 (first reading copy -- white) do pass .

Signed: _____

Bob Bachini, Chairman

EXHIBIT 6
DATE 1-21-91
HB 209

Exhibit 6
by John Cadby
MT Bankers Assn.

HOUSE BILL 209

Mr. Chairman and Members of the Committee:

HB 209 changes the time and place of perfecting a lien on a motor vehicle from the registrar's office in Deer Lodge to the county. The purpose is to speed up perfection of liens so as to comply with the federal bankruptcy law which only allows 10 days for perfection.

Last year the federal bankruptcy court in Montana ruled against a credit union on a $13,480 motor vehicle loan only because the lien had not been perfected in time. In this case, on February 13, 1989 the debtors purchased a 1989 Mazda. The application for title and lien documents were delivered to the county on March 1 as required my Montana law. The registrar at Deer Lodge did not receive the documents until June 5. The actual title and date the lien was perfected was August 4. The debtor filed a bankruptcy petition on August 31.

The bankruptcy judge ruled that the credit union's lien on the Mazda was void and gave the vehicle to the trustee to sell. The credit union lost $13,480 through no fault of its own.

This past year, representatives of Montana Bankers Association, Montana Auto Dealerse Association, and Montana Credit Union Network met with the Attorney General's Motor Vehicle Division and Registrar of Motor Vehicles on numerous occasions to come up with a solution. HB 209 is a simple solution which will protect all lien holders' rights.

Admittedly this is not the total solution because Montana law does allow the purchasers of motor vehicles 20 days to register at the county. On the other hand most motor vehicle sales are handled by dealers and they customarily get the necessary paperwork to the county courthouse within a few days after the purchase. This law will encourage both dealers and lenders to work together to see that the paperwork is expedited and in the hands of the county as soon as possible after the sale of the motor vehicle.

We urge you to pass HB 209.

Exhibit 1

FILED
BERNARD T. McCARTHY, C
RECEIVED
BANKRUPTCY COURT
by
Deputy Clerk

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MONTANA

In re

JAMES R. STEERS, and
JOY L. STEERS,

Debtors,

Case No. 89-41193-007

EXHIBIT 7
DATE 1-21-91
HB 209

GARY S. DESCHENES,
Trustee,

Plaintiff,

-vs-

Adversary Proceeding
No. 289/0119

FIRST LIBERTY FEDERAL
CREDIT UNION,

Defendant.

ORDER

At Butte in said District this 19th day of April, 1990.

On November 7, 1989, the Chapter 7 Trustee/Plaintiff filed a Complaint to Avoid Preferential Transfer in Personal Property and for Turnover of Vehicle. The Defendant filed an Answer on January 2, 1990, admitting most of the material allegations, yet asserting that the Trustee/Plaintiff should take nothing through the Complaint. The parties then filed a Stipulation whereby this matter would be submitted on Stipulated Facts and simultaneous Briefs. This Court approved the Stipulation and the Stipulated Facts and Briefs were filed on or before February 7, 1990. The Complaint is based on § 547 of the Code. Subsequent to the filing of the parties' Briefs, Amicus Curiae Briefs were filed by First Bank Montana, N. A. (First Bank) and

Ross Richardson, panel Trustee. First Bank's Brief supports the Defendant's position and Richardson's Brief supports the Trustee/Plaintiff's position. Upon review of the record, this Court deems this case ripe for decision.

The Stipulated Facts of the Parties are as follows: On February 13, 1989, the Debtors executed and delivered to Defendant a Security Agreement granting a security interest in a 1989 Mazda. The security interest was granted as security for a loan extended to the Debtors in the amount of $13,480.00 to purchase the vehicle. The appropriate title and lien documents were delivered to the Cascade County Treasurer on March 1, 1989 as required by statute. Despite the fact that the registration documents were deposited with Cascade County on March 1, 1989, the State Department of Motor Vehicles (Department) did not receive the registration documents until June 5, 1989. The actual title for the vehicle, noting the Defendant's lien, was subsequently issued by the Department on August 4, 1989. The parties are unaware of any facts indicating that the Defendant caused any of the administrative delay from the registration date of March 1, 1989, to the issuance of title on August 4, 1989. While the parties stipulated Debtors filed a Bankruptcy Petition for relief under Chapter 7 on September 12, 1989, the actual petition date is August 31, 1989.

The Trustee/Plaintiff asserts that the Defendant's lien was not perfected until August 4, 1989, and therefore, the lien is subject to the Trustee's avoidance powers under § 547(b). The Defendant and Amicus First Bank argue that § 547(c) overcomes the

Plaintiff's contentions and case law, together with § 105 of the Code, buttress their positions.

EXHIBIT 7
DATE 1-21-91
HB 209

Section 547(b) of the Code provides:

> "(b) Except as provided in subsection (c) of this section, the trustee may avoid any transfer of an interest of the debtor in property--
>
> (1) to or for the benefit of a creditor;
> (2) for or on account of an antecedent debt owed by the debtor before such transfer was made;
> (3) made while the debtor was insolvent;
> (4) made--
>
> (A) on or within 90 days before the date of the filing of the petition; or
> (B) between ninety days and one year before the date of the filing of the petition, if such creditor at the time of such transfer was an insider; and
>
> (5) that enables such creditor to receive more than such creditor would receive if--
>
> (A) the case were a case under chapter 7 of this title;
> (B) the transfer had not been made; and
> (C) such creditor received payment of such debt to the extent provided by the provisions of this title."

The Stipulated Facts satisfy each of the elements of § 547(b) since under sections 61-3-201(2) and 61-3-103(5), Mont. Code Ann. (1989) perfection of the security interest occurred on August 4, 1989, within 90 days of the filing of the Debtors' Petition. The pertinent Montana Code sections provide for the transfer of title documents to be sent to the county treasurer within 20 days of sale and the transfer documents together with security agreements are then forwarded by the treasurer to the State Motor Vehicles

partment, which issues the new title. Pertinent to this case is

-3-103(5), which provides:

> "The filing of a security interest or other lien, as herein provided, perfects a security interest which has attached at the time the certificate of ownership noting such interest. Issuance of a certificate of ownership constitutes constructive notice to subsequent purchasers or encumbrances, from the time of filing, of the existence of the security interest."

der such statutory scheme, the lien is not perfected until

dorsed on the title by the Department of Motor Vehicles. In re

vis, 1 Mont. B.R. 79 (1985).

Therefore, the issue before the Court is whether § 7(c)(1) or (c)(3) except the Trustee's § 547 avoidance powers in is case. Section 547(c)(1) and (3) provide:

> "(c) The trustee may not avoid under this section a transfer --
>
> (1) to the extent that such transfer was
>
> (A) intended by the debtor and the creditor to or for whose benefit such transfer was made to be a contemporaneous exchange for new value given to the debtor; and
>
> (B) in fact a substantially contemporaneous exchange;
>
> * * * *
>
> (3) that creates a security interest in property acquired by the debtor --
>
> (A) to the extent such security interest secures new value that was--
>
> (i) given at or after the signing of a security agreement that contains a description of such property as collateral;

EXHIBIT 7
DATE 1-21-91
HB 209

(ii) given by or on behalf of the secured party under such agreement;

(iii) given to enable the debtor to acquire such property;

(iv) in fact used by the debtor to acquire such property; and

(B) that is perfected on or before 10 days after the debtor receives possession of such property;"

In Matter of Vance, 721 F.2d 259, 261-62 (9th Cir. 1983), the Ninth Circuit Court of Appeals aptly addressed the interaction between § 547(c)(1) and (3), stating:

"There is no indication in the legislative history that Congress intended section 547(c)(1) to be a general exception covering a variety of transactions. Rather, the legislative history indicates that Congress designed section 547(c)(1) to exclude check or other cash equivalent transactions from the trustee's avoiding powers. Thus, applying section 547(c)(1) to purchase money security interests would expand the scope of the exception far beyond the contemplation of Congress.

Congress specifically provided preference protection for purchase money security interests in section 547(c)(3). That section provides that the security interest must be perfected before 10 days after such security interest attaches. This exception does not protect the Bank's security interest in Vance's trailer because the security interest was perfected fourteen days after the security interest attached.

Even if section 547(c)(1) were to be construed as a general exception for those situations not specifically contemplated by the authors of the Bankruptcy Code, the existence of section 547(c)(3), which

specifically applies to purchase money security transactions, would preclude the application of the general exception to transactions specifically provided for in subsection (c)(3). As the bankruptcy court stated in In re Enlow:

> ' The explicit reference by Congress in Section 547(c)(3) to enabling loans lends further support to the conclusion that Section 547(c)(1) is not applicable to the instant transaction. Through its enactment of Section 547(c)(3) Congress intended to make that section -- not Section 547(c)(1) --applicable to an enabling loan situation.'

20 B.R. at 483. The bankruptcy court in another case applied the traditional maxim 'expressio unius est exclusio alterius' and concluded:

> '11 U.S.C. § 547(c)(3) provides a mechanism by which liens to secure enabling loans might be excepted from avoidance. In so doing it negates the availability of other means of exception. 11 U.S.C. § 547(c)(1) is general; 11 U.S.C. § 547(c)(3) is specific; it refers to "a security interest" such as in this adversary proceeding.'

In re Davis, 22 B.R. at 649. This application of statutory construction techniques is persuasive that Valley Bank should not be able to take advantage of section 547(c)(1).

The Bank contends, however, that subsections (c)(1) and (c)(3) are not mutually exclusive. The Bank refers to the following statement from the legislative history:

> 'Subsection (c) contains exceptions to the trustee's avoiding power. If a creditor can qualify under any one of the exceptions, then he is protected to that extent. If he can qualify under several, he is protected by each to the extent he can qualify under each.'

EXHIBIT 7
DATE 1-21-91
HB 209

H.R.Rep. No. 95-595, 95th Cong., 1st Sess., reprinted in 1978 U.S. Code Cong. & Ad. News at 6329. The Bank argues that this legislative history indicates that Congress did not intend that section 547(c)(3) be the exclusive exception for purchase money security transactions.

The Bank places too much reliance on this legislative history. As one bankruptcy court commented:

> 'The legislative history does not reveal which sections might provide multiple protection or why a transferee would desire to qualify under more than one section because satisfaction of any section excepts the entire transfer from avoidance. Assuming some purpose for multiple protection, however, the legislative history cannot be interpreted, as FMCC argues, to suggest that all exception in § 547(c) are interchangeable and overlap. Each section has distinct prerequisites and to the extent one of those elements is absent, the section is inapplicable. Similarly, those sections that are inconsistent with each other will not be applied to one another.'

In re Murray, 27 B.R. at 449 n. 7. The legislative history does not explicitly state that subsections (c)(1) and (c)(3) overlap. The legislative history does explicitly state that Congress intended section 547(c)(1) to except certain transactions involving payment by check and that section 547(c)(3) excepts certain transactions involving enabling loans. These are distinct types of transactions. The cited legislative history is not persuasive for the proposition that section 547(c)(1) and section 547(c)(3) overlap in their coverage of transactions.

Our conclusion is further supported by the fact that applying section 547(c)(1) to enabling loan transactions would make section 547(c)(3) superfluous. See in re Christian,

8 B.R. at 819. If the contemporaneous exchange exception of section 547(c)(1) were applicable to all purchase money security transactions, then the more specific provisions of section 547(c)(3), such as the 10-day perfection requirement, would be meaningless. We are not persuaded that Congress intended this result."

he Vance decision was followed by this Court in In re Northwest rection, Inc., 56 B.R. 612, 614-15, 1 Mont. B.R. 305, 308 (Bankr. ont. 1986), wherein this Court stated that it was:

" * * * bound by the law of this circuit which clearly holds that the perfection of the security interest must be made within 10 days in order to rely on the contemporaneous exchange exception to the preference rule."

In this case, the loan transaction on February 13, 1989, s a purchase money security transaction. As such, § 547(c)(1) not an applicable exception in this case. Vance, supra at 260- . The Defendant did not have a perfected security interest thin 10 days of the Debtors receiving possession of the 1989 zda.[1] It is noteworthy that § 547(c)(3)(B) uses the term ossession," not legal title. The Debtor took possession of the hicle on February 13, 1989. Accordingly, § 547(c)(3) does not ail the Defendant of an exception to the Trustee's avoidance wers. Northwest Erection, supra at 615.

The Defendant and Amicus First Bank assert that the

[1]In fact, the necessary registration and title documents were t filed with the Cascade County Treasurer until 15 days after e Debtors received possession of the 1989 Mazda.

Trustee/Plaintiff's position will overrule the intent of the parties who were involved in the subject transactions. This Court is aware that the parties' intent is of critical inquiry under § 547(c)(1). In re Wadsworth Bldg. Components, Inc., 711 F.2d 122, 124 (9th Cir. 1983). As noted above, subsection (c)(1) does not apply to the facts in this case. Morever, under § 61-3-103, supra, perfection does not relate back to the transaction date. Williamson v. Skerritt, 141 Mont. 422, 378 P.2d 215 (1963). The holding of In re Damon, 34 B.R. 626, 629 (Bankr. Kan. 1983) is thus appropriate.

> "If the creditor fails to perfect within 10 days, § 547(c)(3) is inapplicable; the transfer is deemed to be made whenever perfection occurs, pursuant to § 547(e)(2), the transfer is on account of an antecedent debt, pursuant to § 547(b)(2), and the transfer is avoidable. Creditors failing to perfect within 10 days have argued, however, that even though they failed to comply with § 547(c)(3), the transfer was substantially contemporaneous to the loan advance pursuant to § 547(c)(1). Courts are divided but the better view holds that when funds are advanced at the time or after a purchase money security interest is granted, but the purchase money security interest is not perfected within 10 days after the security interest attaches, the creditor cannot successfully argue the transfer was nevertheless substantially contemporaneous under § 547(c)(1). (citing cases)"

EXHIBIT 7
DATE 1-21-91
HB 209

Accordingly, the Trustee's avoidance powers overcome the Defendant's security interest, and as such, the Defendant's lien

is void.

IT IS ORDERED that the Defendant's lien on the Debtors' 1989 Mazda, Title No W166014, is hereby voided and said vehicle shall be turned over to the Trustee/Plaintiff for sale, subject to any proper exemption of the Debtor.

JOHN L. PETERSON
United States Bankruptcy Judge
215 Federal Building
Butte, Montana 59701

Copy mailed to Counsel of Record and Trustee this 19th day of, October 1990

Deputy Clerk (cc: U.S. Dist. Ct.)

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

HB 157, HB 209 — Business & Econ Dev. — COMMITTEE

BILL NO. _____ SPONSOR Stickney + Harding DATE 1/21/91

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY.

WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU WANT TO SUBMIT WRITTEN TESTIMONY.

PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	SUPPORT	OPPOSE
DARYLL (BUD) SCHOEN	DOJ MOTOR VEHICLE DIV.	209	✓	
Michael P. VARONE	MBA - Retail + Rem Comm	157		✓
Brendan Beatty	MT Assn Realtors	157		✓
GENE PHILLIPS	FIB of MT.	157		X
Tom Hopgood	MT. ASSOC. REALTORS	157		✓
JOHN CADBY	MT BANKERS ASSN	209	✓	
" "	" "	157		✓
Steve Turkiewicz		209	✓	
Darryl E. Bruno	MT. Auto Dealers Assn	209	✓	
Roger Tippy	Mt Tridep Bankers	157		✓
Tom Hannon	mt. Auto Dealers Assn	209	✓	
[illegible]	Mt. League of Sav Ass	157		✓
Bob Pyfer	Mt Credit Unions League	209	✓	
Michael P. VARONE	NWB Helena + MBA Retail committee	209	✓	

MINUTES

MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By Chairman J.D. Lynch, on February 12, 1991, at 10:00 a.m.

ROLL CALL

Members Present:
J.D. Lynch, Chairman (D)
John Jr. Kennedy, Vice Chairman (D)
Betty Bruski (D)
Eve Franklin (D)
Delwyn Gage (R)
Thomas Hager (R)
Jerry Noble (R)
Gene Thayer (R)
Bob Williams (D)

Members Excused: None

Staff Present: Bart Campbell (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: None

HEARING ON HOUSE BILL 209

Presentation and Opening Statement by Sponsor:

Representative Norm Wallin, sponsor of the bill, stated that HB 209 is a result of a bankruptcy law that currently exists. It is a necessity to see that the liens on automobiles are protected. The dealer or individual who is the seller of a vehicle has four days to transfer the title to the county courthouse. The buyer then has twenty days to purchase a license plate. In that period of time it is possible that the buyer doesn't get the license within twenty days. The bankruptcy law says that the liens in the cases of title transfer have to be recorded within ten days from the date of the sale. The people that loan the money are in jeopardy at least for another ten days that they might loose their collateral, and have to declare bankruptcy. This bill permits the county treasurer to accept those papers on the date that they are recorded.

Proponents' Testimony:

John Cadby, with the Montana banker's association, spoke in favor of the bill (See Exhibit 1, 1A).

Jim Cowin, first valley bank in Seeley Lake, went on record in support of the bill.

Bob Spannagel, first citizens bank in Billings, went on record in support of the bill.

Larry Moore, stockmen's bank in Cascade, went on record in support of the bill.

Tom Harrison, on behalf of the Montana auto dealers association, stated that they are in favor of the bill and endorse the amendments.

Bob Pyfer, vice president of the Montana credit unions league, spoke in favor of the bill. He stated that this is not a case of the bankruptcy law favoring the debtor, this is not a creditor debtor bill.

Bud Schoen, with the department of justice, motor vehicle division, stated that they are in support of the bill.

Opponents' Testimony:

None

Questions From Committee Members:

Senator Gage stated that every time they get a bill in dealing with motor vehicles, the next session they have bills coming in dealing with the recreational vehicles, snowmobiles, motorbikes, etc. He asked if this bill cover these as well, or will there be a wrap next time.

Bill Leary replied that this bill does not cover those, they were overlooked when the bill was drafted. The next session they will have to correct it by including them. The primary concern are the more expensive motor vehicles, and motor homes which this bill does cover.

Senator Thayer asked if all the proponents agree with the amendment being offered (See Exhibit 1, page 3).

All of the proponents agree on the amendment.

Closing by Sponsor:

Representative Norm Wallin closed by saying that there is a fiscal statement attached.

He then stated if the bill passes, Senator Thayer will carry it.

HEARING ON HOUSE BILL 14

Presentation and Opening Statement by Sponsor:

Representative Dorothy Cody, sponsor of the bill, stated that in the last session of the legislature, HB 326 was passed. This bill exempted paralegals from licensing requirements under

Discussion:

None

Amendments, Discussion, and Votes:

None

Recommendation and Vote:

HB 22 was concurred in unanimously with Senator Williams to carry it.

EXECUTIVE ACTION ON HOUSE BILL 209

Motion:

Senator Thayer moved that HB 209 be amended.

Discussion:

None.

Amendments, Discussion, and Votes:

The amendments for HB 209 passed unanimously.

Senator Noble moved that HB 209 be concurred in as amended.

Senator Gage stated that the proponents indicated that it is too late to do anything about the other vehicles. He is not sure it is too late. It is as good as time as any to put those vehicles in here.

Bart Campbell stated that they would be expanding the bill.

Senator Gage stated that they might as well make any changes now.

Senator Noble withdrew his motion for HB 209 be concurred in as amended.

Recommendation and Vote:

ADJOURNMENT

Adjournment At: 10:30 a.m.

J.D. LYNCH, Chairman

DARA ANDERSON, Secretary

BU021291.SM1

ROLL CALL

Business&Industry COMMITTEE

DATE 2/12/91

____ LEGISLATIVE SESSION ____

NAME	PRESENT	ABSENT	EXCUSED
Senator Bruski	X		
Senator Franklin	X		
Senator Gage	X		
Senator Hager	X		
Senator Noble	X		
Senator Thayer	X		
Senator Williams	X		
Senator Kennedy	X		
Senator Lynch	X		

Each day attach to minutes.

DATE 2/12/91

COMMITTEE ON BUSINESS & INDUSTRY

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
JARYLL (BUD) SCHOEN	DOJ - MOTOR VEHICLE DIV.	HB209	✓	
MAXWELL SUDA	SELF	HB22	✓	
SUSAN D. RIBEL	GOUGH SHANAHAN JOHNSON WATERMAN	HB22	✓	
Robyn Young	Securities Dept	HB14	✓	
Bill Leary	MT. BANKERS ASSN	HB209	✓	
Larry S Moore	Stockmens Bank - Cascade	HB209	✓	
R.N. Swanagel	B.I.I.M.S.	HB209	✓	
JOHN CADBY	MT BANKERS ASSN.	HB209	✓	
Tom Hannon	Mt. auto Dealers	H 209	✓	
Bill Leary	MT. BANKERS ASSN	HB 14		

(Please leave prepared statement with Secretary)

ROLL CALL VOTE

SENATE COMMITTEE Business and Industry

Date 2/12/91 Bill No. HB209 Time 10:00

NAME	YES	NO
Senator Bruski	X	
Senator Franklin	X	
Senator Gage	X	
Senator Hager	X	
Senator Noble	X	
Senator Thayer	X	
Senator Williams	X	
Senator Kennedy	X	
Senator Lynch	X	

Dara Anderson
Secretary

JD Lynch
Chairman

Thayer
Motion: TO AMEND

1087

John Cadby
Mt Bankers Assoc.

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 1
DATE 2/12/91
BILL NO. HB209

PERFECTION OF MOTOR VEHICLE LIENS

HOUSE BILL 209

by Montana Bankers Association

Mr. Chairman and Members of the Senate Business and Industry Committee:

HB 209 changes the time and place of perfecting a lien on transfers of ownership of a motor vehicle from the registrar's office in Deer Lodge to the county. The county will issue a receipt to the lender when they receive the title and lien. The purpose is to speed up perfection of liens so as to comply with the federal bankruptcy law which only allows 10 days for perfection.

Last year the federal bankruptcy court in Montana ruled against a credit union on a $13,480 motor vehicle loan only because the lien had not been perfected in time. In this case, on February 13, 1989 the debtors purchased a 1989 Mazda. The application for title and lien documents were delivered to the county on March 1 as required my Montana law. The registrar at Deer Lodge did not receive the documents until June 5. The actual title and date the lien was perfected was August 4. The debtor filed a bankruptcy petition on August 31.

The bankruptcy judge ruled that the credit union's lien on the Mazda was void and gave the vehicle to the trustee to sell. The credit union lost $13,480 through no fault of its own.

This past year, representatives of Montana Bankers Association, Montana Auto Dealers Association, and Montana Credit Union Network met with the Attorney General's Motor Vehicle

Division and Registrar of Motor Vehicles on numerous occasions to come up with a solution. HB 209 is a simple solution which will protect all lien holders' rights.

Admittedly this is not the total solution because Montana law does allow the purchasers of motor vehicles 20 days to register at the county. On the other hand most motor vehicle sales are handled by dealers and they customarily get the necessary paperwork to the county courthouse within a few days after the purchase. This law will encourage both dealers and lenders to work together to see that the paperwork is expedited and in the hands of the county as soon as possible after the sale of the motor vehicle.

The proposed amendments simply make sure the title accompanies the lien papers to save the county treasurers some time and labor. They also cover those liens (about 40,000) which are filed direct with the Registrar by lenders when someone comes in to borrow money and uses their motor vehicle (with a clear title) as collateral. These "collateral loans" are not now going through the counties so there is no change in present procedures.

We urge you to pass HB 209.

Amendment to House Bill 209

Amend page 3, Section 1 (5), line 12, after the word "notice" add: "AND THE CERTIFICATE OF OWNERSHIP OR MANUFACTURERS' STATEMENT OF ORIGIN", and after the word "treasurer" delete "." and add: "EXCEPT THOSE SECURITY INTERESTS OR OTHER LIENS NOT REQUIRING A TRANSFER OF OWNERSHIP."

Add on page 3, line 20, a new subsection:

"(6) SECURITY INTERESTS OR OTHER LIEN FILINGS THAT DO NOT REQUIRE TRANSFER OF OWNERSHIP SHALL BE PERFECTED WHEN RECEIVED BY THE DEPARTMENT. ON THAT DATE, THE DEPARTMENT SHALL ISSUE TO THE SECURED PARTY A RECEIPT EVIDENCING THE PERFECTION. PERFECTION UNDER THIS SECTION CONSTITUTES CONSTRUCTIVE NOTICE TO SUBSEQUENT PURCHASERS OR ENCUMBRANCES, FROM THE DATE OF DELIVERY OF THE LIEN NOTICE TO THE DEPARTMENT, OF THE EXISTENCE OF THE SECURITY INTEREST."

And renumber remaining subsections.

Purpose of Amendments:

These amendments require motor vehicle titles accompany lien filing with county and Registrar of Motor Vehicles. Subsection (6) provides for perfection of liens filed direct with the Registrar of Motor Vehicles. There are about 40,000 such liens a year for the owners of motor vehicles who obtain a loan and use his motor vehicle as collateral.

Amendment to House Bill 209

Amend page 3, Section 1 (5), line 12, after the word "notice" add: "AND THE CERTIFICATE OF OWNERSHIP OR MANUFACTURERS' STATEMENT OF ORIGIN", and after the word "treasurer" delete "." and add: "EXCEPT THOSE SECURITY INTERESTS OR OTHER LIENS NOT REQUIRING A TRANSFER OF OWNERSHIP."

Add on page 3, line 20, a new subsection:

"(6) SECURITY INTERESTS OR OTHER LIEN FILINGS THAT DO NOT REQUIRE TRANSFER OF OWNERSHIP SHALL BE PERFECTED WHEN RECEIVED BY THE DEPARTMENT. ON THAT DATE, THE DEPARTMENT SHALL ISSUE TO THE SECURED PARTY A RECEIPT EVIDENCING THE PERFECTION. PERFECTION UNDER THIS SECTION CONSTITUTES CONSTRUCTIVE NOTICE TO SUBSEQUENT PURCHASERS OR ENCUMBRANCES, FROM THE DATE OF DELIVERY OF THE LIEN NOTICE TO THE DEPARTMENT, OF THE EXISTENCE OF THE SECURITY INTEREST."

And renumber remaining subsections.

Purpose of Amendments:

These amendments require motor vehicle titles accompany lien filing with county and Registrar of Motor Vehicles. Subsection (6) provides for perfection of liens filed direct with the Registrar of Motor Vehicles. There are about 40,000 such liens a year for the owners of motor vehicles who obtain a loan and use his motor vehicle as collateral.

ATE BUSINESS & INDUSTRY
EXHIBIT NO. 1A
DATE 2/12/91
BILL NO. HB 209

RECEIVED
BERNARD P. McCARTHY, CLERK
DISTRICT COURT
by
Deputy Clerk

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MONTANA

In re

JAMES R. STEERS, and
JOY L. STEERS,

Debtors,

Case No. 89-41193-007

GARY S. DESCHENES,
Trustee,

Plaintiff,

-vs-

Adversary Proceeding
No. 289/0119

FIRST LIBERTY FEDERAL
CREDIT UNION,

Defendant.

ORDER

At Butte in said District this 19th day of April, 1990.

On November 7, 1989, the Chapter 7 Trustee/Plaintiff filed a Complaint to Avoid Preferential Transfer in Personal Property and for Turnover of Vehicle. The Defendant filed an Answer on January 2, 1990, admitting most of the material allegations, yet asserting that the Trustee/Plaintiff should take nothing through the Complaint. The parties then filed a Stipulation whereby this matter would be submitted on Stipulated Facts and simultaneous Briefs. This Court approved the Stipulation and the Stipulated Facts and Briefs were filed on or before February 7, 1990. The Complaint is based on § 547 of the Code. Subsequent to the filing of the parties' Briefs, Amicus Curiae Briefs were filed by First Bank Montana, N. A. (First Bank) and

Ross Richardson, panel Trustee. First Bank's Brief supports the Defendant's position and Richardson's Brief supports the Trustee/Plaintiff's position. Upon review of the record, this Court deems this case ripe for decision.

The Stipulated Facts of the Parties are as follows: On February 13, 1989, the Debtors executed and delivered to Defendant a Security Agreement granting a security interest in a 1989 Mazda. The security interest was granted as security for a loan extended to the Debtors in the amount of $13,480.00 to purchase the vehicle. The appropriate title and lien documents were delivered to the Cascade County Treasurer on March 1, 1989 as required by statute. Despite the fact that the registration documents were deposited with Cascade County on March 1, 1989, the State Department of Motor Vehicles (Department) did not receive the registration documents until June 5, 1989. The actual title for the vehicle, noting the Defendant's lien, was subsequently issued by the Department on August 4, 1989. The parties are unaware of any facts indicating that the Defendant caused any of the administrative delay from the registration date of March 1, 1989, to the issuance of title on August 4, 1989. While the parties stipulated Debtors filed a Bankruptcy Petition for relief under Chapter 7 on September 12, 1989, the actual petition date is August 31, 1989.

The Trustee/Plaintiff asserts that the Defendant's lien was not perfected until August 4, 1989, and therefore, the lien is subject to the Trustee's avoidance powers under § 547(b). The Defendant and Amicus First Bank argue that § 547(c) overcomes the

Plaintiff's contentions and case law, together with § 105 of the Code, buttress their positions.

Section 547(b) of the Code provides:

> "(b) Except as provided in subsection (c) of this section, the trustee may avoid any transfer of an interest of the debtor in property--
>
> (1) to or for the benefit of a creditor;
> (2) for or on account of an antecedent debt owed by the debtor before such transfer was made;
> (3) made while the debtor was insolvent;
> (4) made--
>
> (A) on or within 90 days before the date of the filing of the petition; or
> (B) between ninety days and one year before the date of the filing of the petition, if such creditor at the time of such transfer was an insider; and
>
> (5) that enables such creditor to receive more than such creditor would receive if--
>
> (A) the case were a case under chapter 7 of this title;
> (B) the transfer had not been made; and
> (C) such creditor received payment of such debt to the extent provided by the provisions of this title."

The Stipulated Facts satisfy each of the elements of § 547(b) since under sections 61-3-201(2) and 61-3-103(5), Mont. Code Ann. (1989) perfection of the security interest occurred on August 4, 1989, within 90 days of the filing of the Debtors' Petition. The pertinent Montana Code sections provide for the transfer of title documents to be sent to the county treasurer within 20 days of sale and the transfer documents together with security agreements are then forwarded by the treasurer to the State Motor Vehicles

Department, which issues the new title. Pertinent to this case is 61-3-103(5), which provides:

> "The filing of a security interest or other lien, as herein provided, perfects a security interest which has attached at the time the certificate of ownership noting such interest. Issuance of a certificate of ownership constitutes constructive notice to subsequent purchasers or encumbrances, from the time of filing, of the existence of the security interest."

Under such statutory scheme, the lien is not perfected until endorsed on the title by the Department of Motor Vehicles. In re Davis, 1 Mont. B.R. 79 (1985).

Therefore, the issue before the Court is whether § 547(c)(1) or (c)(3) except the Trustee's § 547 avoidance powers in this case. Section 547(c)(1) and (3) provide:

> "(c) The trustee may not avoid under this section a transfer --
>
> (1) to the extent that such transfer was
>
> (A) intended by the debtor and the creditor to or for whose benefit such transfer was made to be a contemporaneous exchange for new value given to the debtor; and
>
> (B) in fact a substantially contemporaneous exchange;
>
> * * * *
>
> (3) that creates a security interest in property acquired by the debtor --
>
> (A) to the extent such security interest secures new value that was--
>
> (i) given at or after the signing of a security agreement that contains a description of such property as collateral;

(ii) given by or on behalf of the secured party under such agreement;

(iii) given to enable the debtor to acquire such property;

(iv) in fact used by the debtor to acquire such property; and

(B) that is perfected on or before 10 days after the debtor receives possession of such property;"

In Matter of Vance, 721 F.2d 259, 261-62 (9th Cir. 1983), the Ninth Circuit Court of Appeals aptly addressed the interaction between § 547(c)(1) and (3), stating:

"There is no indication in the legislative history that Congress intended section 547(c)(1) to be a general exception covering a variety of transactions. Rather, the legislative history indicates that Congress designed section 547(c)(1) to exclude check or other cash equivalent transactions from the trustee's avoiding powers. Thus, applying section 547(c)(1) to purchase money security interests would expand the scope of the exception far beyond the contemplation of Congress.

Congress specifically provided preference protection for purchase money security interests in section 547(c)(3). That section provides that the security interest must be perfected before 10 days after such security interest attaches. This exception does not protect the Bank's security interest in Vance's trailer because the security interest was perfected fourteen days after the security interest attached.

Even if section 547(c)(1) were to be construed as a general exception for those situations not specifically contemplated by the authors of the Bankruptcy Code, the existence of section 547(c)(3), which

specifically applies to purchase money security transactions, would preclude the application of the general exception to transactions specifically provided for in subsection (c)(3). As the bankruptcy court stated in In re Enlow:

> ' The explicit reference by Congress in Section 547(c)(3) to enabling loans lends further support to the conclusion that Section 547(c)(1) is not applicable to the instant transaction. Through its enactment of Section 547(c)(3) Congress intended to make that section -- not Section 547(c)(1) --applicable to an enabling loan situation.'

20 B.R. at 483. The bankruptcy court in another case applied the traditional maxim 'expressio unius est exclusio alterius' and concluded:

> '11 U.S.C. § 547(c)(3) provides a mechanism by which liens to secure enabling loans might be excepted from avoidance. In so doing it negates the availability of other means of exception. 11 U.S.C. § 547(c)(1) is general; 11 U.S.C. § 547(c)(3) is specific; it refers to "a security interest" such as in this adversary proceeding.'

In re Davis, 22 B.R. at 649. This application of statutory construction techniques is persuasive that Valley Bank should not be able to take advantage of section 547(c)(1).

The Bank contends, however, that subsections (c)(1) and (c)(3) are not mutually exclusive. The Bank refers to the following statement from the legislative history:

> 'Subsection (c) contains exceptions to the trustee's avoiding power. If a creditor can qualify under any one of the exceptions, then he is protected to that extent. If he can qualify under several, he is protected by each to the extent he can qualify under each.'

H.R.Rep. No. 95-595, 95th Cong., 1st Sess., reprinted in 1978 U.S. Code Cong. & Ad. News at 6329. The Bank argues that this legislative history indicates that Congress did not intend that section 547(c)(3) be the exclusive exception for purchase money security transactions.

The Bank places too much reliance on this legislative history. As one bankruptcy court commented:

> 'The legislative history does not reveal which sections might provide multiple protection or why a transferee would desire to qualify under more than one section because satisfaction of any section excepts the entire transfer from avoidance. Assuming some purpose for multiple protection, however, the legislative history cannot be interpreted, as FMCC argues, to suggest that all exception in § 547(c) are interchangeable and overlap. Each section has distinct prerequisites and to the extent one of those elements is absent, the section is inapplicable. Similarly, those sections that are inconsistent with each other will not be applied to one another.'

In re Murray, 27 B.R. at 449 n. 7. The legislative history does not explicitly state that subsections (c)(1) and (c)(3) overlap. The legislative history does explicitly state that Congress intended section 547(c)(1) to except certain transactions involving payment by check and that section 547(c)(3) excepts certain transactions involving enabling loans. These are distinct types of transactions. The cited legislative history is not persuasive for the proposition that section 547(c)(1) and section 547(c)(3) overlap in their coverage of transactions.

Our conclusion is further supported by the fact that applying section 547(c)(1) to enabling loan transactions would make section 547(c)(3) superfluous. See in re Christian,

> 8 B.R. at 819. If the contemporaneous exchange exception of section 547(c)(1) were applicable to all purchase money security transactions, then the more specific provisions of section 547(c)(3), such as the 10-day perfection requirement, would be meaningless. We are not persuaded that Congress intended this result."

The Vance decision was followed by this Court in In re Northwest Erection, Inc., 56 B.R. 612, 614-15, 1 Mont. B.R. 305, 308 (Bankr. Mont. 1986), wherein this Court stated that it was:

> " * * * bound by the law of this circuit which clearly holds that the perfection of the security interest must be made within 10 days in order to rely on the contemporaneous exchange exception to the preference rule."

In this case, the loan transaction on February 13, 1989, was a purchase money security transaction. As such, § 547(c)(1) is not an applicable exception in this case. Vance, supra at 260-61. The Defendant did not have a perfected security interest within 10 days of the Debtors receiving possession of the 1989 Mazda.[1] It is noteworthy that § 547(c)(3)(B) uses the term "possession," not legal title. The Debtor took possession of the vehicle on February 13, 1989. Accordingly, § 547(c)(3) does not avail the Defendant of an exception to the Trustee's avoidance powers. Northwest Erection, supra at 615.

The Defendant and Amicus First Bank assert that the

---

[1]In fact, the necessary registration and title documents were not filed with the Cascade County Treasurer until 15 days after the Debtors received possession of the 1989 Mazda.

Trustee/Plaintiff's position will overrule the intent of the parties who were involved in the subject transactions. This Court is aware that the parties' intent is of critical inquiry under § 547(c)(1). In re Wadsworth Bldg. Components, Inc., 711 F.2d 122, 124 (9th Cir. 1983). As noted above, subsection (c)(1) does not apply to the facts in this case. Morever, under § 61-3-103, supra, perfection does not relate back to the transaction date. Williamson v. Skerritt, 141 Mont. 422, 378 P.2d 215 (1963). The holding of In re Damon, 34 B.R. 626, 629 (Bankr. Kan. 1983) is thus appropriate.

> "If the creditor fails to perfect within 10 days, § 547(c)(3) is inapplicable; the transfer is deemed to be made whenever perfection occurs, pursuant to § 547(e)(2), the transfer is on account of an antecedent debt, pursuant to § 547(b)(2), and the transfer is avoidable. Creditors failing to perfect within 10 days have argued, however, that even though they failed to comply with § 547(c)(3), the transfer was substantially contemporaneous to the loan advance pursuant to § 547(c)(1). Courts are divided but the better view holds that when funds are advanced at the time or after a purchase money security interest is granted, but the purchase money security interest is not perfected within 10 days after the security interest attaches, the creditor cannot successfully argue the transfer was nevertheless substantially contemporaneous under § 547(c)(1). (citing cases)"

Accordingly, the Trustee's avoidance powers overcome the Defendant's security interest, and as such, the Defendant's lien

is void.

IT IS ORDERED that the Defendant's lien on the Debtors' 1989 Mazda, Title No W166014, is hereby voided and said vehicle shall be turned over to the Trustee/Plaintiff for sale, subject to any proper exemption of the Debtor.

JOHN L. PETERSON
United States Bankruptcy Judge
215 Federal Building
Butte, Montana 59701

Copy mailed to Counsel of Record and Trustee this 19th day of, April 1990

Deputy Clerk (cc: Atty. Lis Def. Ltr)

Senator Franklin moved the amendments proposed by blue cross blue shield regarding gender.
Senator Bruski moved HB 672 be concurred in as amended.

Discussion:

None

Amendments, Discussion, and Votes:

The motion by Senator Williams to amend HB 672 passed unanimously.
The motion by Senator Hager to amend HB 672 passed unanimously.
The motion by Senator Franklin to amend HB 672 passed by a 7 to 2 vote.

Recommendation and Vote:

The motion made by Senator Bruski that HB 672 be concurred in as amended passed unanimously. Senator Franklin will carry the bill to the floor.

EXECUTIVE ACTION ON HOUSE BILL 530

Motion:

Senator Noble moved HB 530 be concurred in.

Discussion:

None

Amendments, Discussion, and Votes:

None

Recommendation and Vote:

The motion made by Senator Noble that HB 530 be concurred in passed unanimously. Senator Kennedy will carry the bill to the floor.

EXECUTIVE ACTION ON HOUSE BILL 209

Motion:

Senator Gage moved to amend HB 209.
Senator Gage moved HB 209 be concurred in as amended.

Discussion:

None

Amendments, Discussion, and Votes:

The motion made to amend HB 209 passed unanimously.

Recommendation and Vote:

The motion made that HB 209 be concurred in as amended passed unanimously. Senator Thayer will carry the bill to the floor.

EXECUTIVE ACTION ON HOUSE BILL 655

Motion:

Senator Williams moved HB 655 be concurred in.

Discussion:

Senator Noble stated that he felt that the people who testified in favor of the bill, especially the people who work with propane, were very knowledgeable and safety conscious.

Senator Hager stated that he was shocked when the opponents brought in the paper article from the explosion in Billings, Montana. He had carried a bill like this which had been defeated two weeks before that explosion happened. It was in the paper two weeks later that the explosion was definitely not caused by propane.

Senator Lynch stated that the fire marshal did not oppose the bill.

Amendments, Discussion, and Votes:

None

Recommendation and Vote:

The motion that HB 655 be concurred in passed unanimously. Senator Noble will carry the bill to the floor.

EXECUTIVE ACTION ON HOUSE BILL 203

Motion:

Senator Bruski moved HB 203 be concurred in.

Discussion:

ROLL CALL

BUSINESS AND INDUSTRY COMMITTEE

DATE 3/18/91

52ND LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
SENATOR BRUSKI	Y		
SENATOR FRANKLIN	X		
SENATOR GAGE	X		
SENATOR HAGER	X		
SENATOR NOBLE	X		
SENATOR THAYER	X		
SENATOR WILLIAMS	X		
SENATOR KENNEDY	X		
SENATOR LYNCH	X		

Each day attach to minutes.

ROLL CALL VOTE

SENATE COMMITTEE BUSINESS AND INDUSTRY

Date 3/18/91 Bill No. HB 207 Time 10 a.m.

NAME	YES	NO
SENATOR WILLIAMS	X	
SENATOR THAYER	X	
SENATOR NOBLE	X	
SENATOR HAGER	X	
SENATOR GAGE	X	
SENATOR FRANKLIN	X	
SENATOR BRUSKI	X	
SENATOR KENNEDY	X	
SENATOR LYNCH	X	

DARA ANDERSON
Secretary

J.D. LYNCH
Chairman

Motion: AMENDMENTS

ROLL CALL VOTE

SENATE COMMITTEE BUSINESS AND INDUSTRY

Date 3/18/91 Bill No. HB209 Time 10 a.m.

NAME	YES	NO
SENATOR WILLIAMS	X	
SENATOR THAYER	X	
SENATOR NOBLE	X	
SENATOR HAGER	X	
SENATOR GAGE	X	
SENATOR FRANKLIN	X	
SENATOR BRUSKI	X	
SENATOR KENNEDY	X	
SENATOR LYNCH	X	

DARA ANDERSON
Secretary

J.D. LYNCH
Chairman

Motion: BE CONCURRED IN AS AMENDED
SN. THAYER

Amendments to House Bill No. 209
First Reading Copy

For the Committee on Business and Industry

Prepared by Bart Campbell
February 11, 1991

1. Title, line 5.
Following: "VEHICLE"
Insert: ", BOAT, SNOWMOBILE, OR OFF-HIGHWAY VEHICLE"

2. Title, line 7.
Strike: "SECTION"
Insert: "SECTIONS 23-2-508, 23-2-611, 23-2-811, AND"

3. Page 3, line 12.
Following: "notice"
Strike: "is"
Insert: "and the certificate of ownership or manufacturers' statement of origin are"

4. Page 3, line 20.
Following: line 19
Insert: "(6) Security interests or other lien filings that do not require transfer of ownership are perfected when received by the department. On that date, the department shall issue to the secured party a receipt evidencing the perfection. Perfection under this subsection constitutes constructive notice to subsequent purchasers or encumbrancers, from the date the lien notice is delivered to the department, of the existence of the security interest."
Renumber: subsequent subsections

5. Page 5, line 12.
Insert: "**Section 2.** Section 23-2-508, MCA, is amended to read:

"**23-2-508. Certificate of ownership -- filing of security interests.** (1) Except as provided in subsection (9), a motorboat or sailboat 12 feet in length or longer may not be operated upon the waters of the state unless a certificate of ownership has first been obtained from the department of justice in accordance with the laws of this state.

(2) The owner of a motorboat or sailboat 12 feet in length or longer shall apply for a certificate of ownership and a certificate of number with the county treasurer of the county in which the owner resides, upon forms furnished by the department of justice. The forms must require the following information:

(a) name of the owner;
(b) residence of the owner, by town or county;
(c) business or home address of the owner;
(d) name and address of any lienholder;
(e) amount due under any contract or lien;
(f) name of the manufacturer;
(g) model number or name;
(h) identification number;

(i) name and address of the dealer or other person from whom acquired, if known; and

(j) such other information as the department of justice may require.

(3) The application is to be accompanied by documentation of ownership, such as an invoice, bill of sale, foreign title, official certificate of boat number, fee in lieu of tax receipt, or a certificate of ownership of a trailer purchased with the motorboat or sailboat. An applicant who fails to provide such proof of ownership shall provide a certified statement describing how the motorboat or sailboat 12 feet in length or longer was acquired, from whom acquired if known, and other information requested by the department of justice.

(4) If a certificate of ownership has previously been issued under the provisions of this part, the application for a new certificate must be accompanied by the immediately previous certificate. This subsection does not apply to motorboats or sailboats 12 feet in length or longer that are purchased as new and unused vessels or that were operated when the provisions of this part were not in force and effect.

(5) Any motorboat or sailboat 12 feet in length or longer that does not have a manufacturer's or other identifying number thereon must be assigned an identification number by the department of fish, wildlife, and parks. A fee of $1 must be paid to the department for an assignment of number.

(6) Upon completion of the application, the county treasurer shall issue to the applicant two copies of the certificate of number application, one of which must be marked "file copy". The treasurer shall forward one copy and the original application for a certificate of ownership to the department of justice, which shall enter the information contained in the application upon the corresponding records of its office, and shall furnish the applicant a certificate of ownership containing that information in the application considered necessary by the department and a permanent boat number. The certificate of ownership need not be renewed annually and is valid as long as the person holding it owns the vessel.

(7) The owner shall at all times retain possession of the certificate of ownership, except when it is being transmitted to and from the department of justice for endorsement or cancellation.

(8) Upon application for a certificate of ownership, a fee of $5 must be paid to the county treasurer, $3.50 of which must be forwarded by the county treasurer to the department of justice and deposited in the general fund.

(9) A person who, on July 1, 1988, is the owner of a motorboat or sailboat 12 feet in length or longer with a valid certificate of number issued by the state is not required to file an application for a certificate of ownership for the motorboat or sailboat unless he transfers a part of his interest in the motorboat or sailboat or he renews the certificate of number for the motorboat or sailboat.

(10) A security interest in a boat is not valid as against creditors, subsequent purchasers, or encumbrancers unless a lien notice, showing that a security interest has been created, has

been ~~filed with the department of justice~~ perfected as provided in this section. The lien notice must be filed on a form approved by the department [of justice]. The department of justice may not file a security interest or other lien unless it is accompanied by or specified in the application for a certificate of ownership of the boat encumbered. If the lien notice is transmitted to the department of justice, the security agreement or other lien instrument that creates the security interest must be retained by the secured party. A copy of the security agreement is sufficient as a lien notice if it contains the name and address of the debtor and the secured party, the complete boat description, the amount of the lien, and the signature of the debtor. The department of justice shall file the security interest or lien by entering the name and address of the secured party upon the face of the certificate of ownership. The department of justice shall mail a statement certifying the filing of a security interest or lien to the secured party. The department of justice shall mail the certificate of ownership to the owner at the address given on the certificate; however, if the transfer of ownership and filing of the security interest are paid for by a creditor or secured party, the department of justice shall return the certificate of ownership to the county treasurer of the county where the boat is to be registered. The owner of a boat is the person entitled to operate and possess the boat.

(11) A security interest in a boat held as inventory by a dealer must be perfected in accordance with Title 30, chapter 9, and no endorsement on the certificate of title is necessary for perfection.

(12) Whenever a security interest or lien is filed against a boat that is subject to two security interests previously perfected ~~by filing~~ under this section, the department of justice shall endorse on the face of the certificate of ownership: "NOTICE. This boat is subject to additional security interest on file with the Department of Justice." No other information regarding the additional security interests need be endorsed on the certificate.

(13) Satisfactions or statements of release filed with the department of justice under this part must be retained for a period of 8 years after receipt, after which they may be destroyed.

(14) ~~The filing of a~~ A security interest or other lien as ~~herein~~ provided in this section, ~~perfects a security interest that has attached at the time the certificate of ownership noting the interest is issued~~ is perfected on the date the lien notice is delivered to the county treasurer. On that date, the county treasurer shall issue to the secured party a receipt evidencing perfection. ~~Issuance of a certificate of ownership~~ Perfection under this section constitutes constructive notice to subsequent purchasers or encumbrancers, from the ~~time of filing~~ date of delivery of the lien notice to the county treasurer, of the existence of the security interest.

(15) Upon default under a chattel mortgage or conditional sales contract covering a boat, the mortgagee or vendor has the same remedies as in the case of other personal property. In case of attachment of a boat all the provisions of 27-18-413, 27-18-

414, and 27-18-804 are applicable, except that deposits must be made with the department of justice.

(16) A conditional sales vendor or chattel mortgagee or assignee who fails to file a satisfaction of a chattel mortgage, assignment, or conditional sales contract within 15 days after receiving final payment is required to pay the department of justice the sum of $1 for each day that he fails to file the satisfaction.

(17) Upon receipt of any liens, notice of liens dependent on possession, or attachments against the record of any boat registered in this state, the department of justice shall within 24 hours mail to the owner, conditional sales vendor, mortgagee, or their assignee a notice showing the name and address of the lien claimant, the amount of the lien, the date of execution of the lien, and, in the case of attachment, the full title of the court, the action, and the name of the attorney for the plaintiff or the name of the attaching creditor, or both.

(18) It is not necessary to refile with the department of justice any instruments on file in the office of any county clerk and recorder on October 1, 1989.

(19) A fee of $4 must be paid to the department of justice to file any security interest or other lien against a boat. The $4 fee must cover the cost of filing a satisfaction or release of the security interest and the cost of entering the satisfaction or release on the records of the department of justice and deleting the endorsement of the security interest from the face of the certificate of ownership. A fee of $4 must be paid to the department of justice for issuing a certified copy of a certificate of ownership subject to a security interest or other lien on file with the department of justice or for filing an assignment of any security interest or other lien on file with the department of justice. All fees provided for in this section must be paid to the county treasurer for deposit in the general fund in accordance with 15-1-504."

Section 3. Section 23-2-611, MCA, is amended to read:

"**23-2-611. Certificate of ownership -- filing of security interests.** (1) A snowmobile may not be operated upon any public lands, trails, easements, lakes, rivers, streams, roadways or shoulders of roadways, streets, or highways unless a certificate of ownership has first been obtained from the department of justice in accordance with the laws of this state.

(2) The owner of a snowmobile shall apply for a certificate of ownership with the county treasurer of the county in which the owner resides, upon forms to be furnished for this purpose. The forms must require the following information:

(a) name of the owner;
(b) residence of the owner, by town and county;
(c) business or home mail address of the owner;
(d) name and address of any lienholder;
(e) amount due under any contract or lien;
(f) name of the manufacturer;
(g) model number or name;
(h) identification number; and
(i) name and address of the dealer or other person from

whom acquired.

(3) The application must be signed by at least one owner or by a properly authorized officer or representative of the owner.

(4) If a certificate of ownership has previously been issued under the provisions of 23-2-601 through 23-2-644, the application for a new certificate must be accompanied by the immediately previous certificate. This subsection does not apply to snowmobiles that are purchased as new and unused machines or that were operated when the provisions of 23-2-601 through 23-2-644 were not in force and effect.

(5) Upon completion of the application, on forms furnished by the department of justice, the county treasurer shall issue to the applicant two copies of the application, one of which shall be marked "file copy". The treasurer shall forward one copy and the original application to the department of justice, which shall enter the information contained in the application upon the corresponding records of its office and shall furnish the applicant a certificate of ownership, which shall contain that information in the application considered necessary by the department of justice, and a permanent ownership number. The certificate of ownership is not to be renewed annually and is valid as long as the person holding it owns the snowmobile.

(6) The owner shall at all times retain possession of the certificate of ownership, except when it is being transmitted to and from the department of justice for endorsement or cancellation.

(7) Upon application for a certificate of ownership, a fee of $5 shall be paid to the county treasurer, $3.50 of which shall be forwarded by the county treasurer to the department of justice and deposited in the general fund.

(8) A security interest in a snowmobile is not valid as against creditors, subsequent purchasers, or encumbrancers unless a lien notice, showing that a security interest has been created, has been ~~filed with the department of justice~~ perfected as provided in this section. The lien notice must be filed on a form approved by the department [of justice]. The department of justice may not file a security interest or other lien unless it is accompanied by or specified in the application for a certificate of ownership of the snowmobile encumbered. If the lien notice is transmitted to the department of justice, the security agreement or other lien instrument that creates the security interest must be retained by the secured party. A copy of the security agreement is sufficient as a lien notice if it contains the name and address of the debtor and the secured party, the complete snowmobile description, the amount of the lien, and the signature of the debtor. The department of justice shall file the security interest or lien by entering the name and address of the secured party upon the face of the certificate of ownership. The department of justice shall mail a statement certifying the filing of a security interest or lien to the secured party. The department of justice shall mail the certificate of ownership to the owner at the address given on the certificate; however, if the transfer of ownership and filing of the security interest are paid for by a creditor or secured party, the department of justice shall return the certificate of

ownership to the county treasurer of the county where the snowmobile is to be registered. The owner of a snowmobile is the person entitled to operate and possess the snowmobile.

(9) A security interest in a snowmobile held as inventory by a dealer must be perfected in accordance with Title 30, chapter 9, and no endorsement on the certificate of title is necessary for perfection.

(10) Whenever a security interest or lien is filed against a snowmobile that is subject to two security interests previously perfected ~~by filing~~ under this section, the department of justice shall endorse on the face of the certificate of ownership: "NOTICE. This snowmobile is subject to additional security interest on file with the Department of Justice". No other information regarding the additional security interests need be endorsed on the certificate.

(11) Satisfactions or statements of release filed with the department of justice under this part must be retained for a period of 8 years after receipt, after which they may be destroyed.

(12) ~~The filing of a~~ A security interest or other lien as ~~herein~~ provided in this section, ~~perfects a security interest that has attached at the time the certificate of ownership noting the interest is issued~~ is perfected on the date the lien notice is delivered to the county treasurer. On that date, the county treasurer shall issue to the secured party a receipt evidencing the perfection. ~~Issuance of a certificate of ownership~~ Perfection under this section constitutes constructive notice to subsequent purchasers or encumbrancers, from the ~~time of filing~~ date of delivery of the lien notice to the county treasurer, of the existence of the security interest.

(13) Upon default under a chattel mortgage or conditional sales contract covering a snowmobile, the mortgagee or vendor has the same remedies as in the case of other personal property. In case of attachment of a snowmobile all the provisions of 27-18-413, 27-18-414, and 27-18-804 are applicable, except that deposits must be made with the department of justice.

(14) A conditional sales vendor or chattel mortgagee or assignee who fails to file a satisfaction of a chattel mortgage, assignment, or conditional sales contract within 15 days after receiving final payment is required to pay the department of justice the sum of $1 for each day that he fails to file the satisfaction.

(15) Upon receipt of any liens, notice of liens dependent on possession, or attachments against the record of any snowmobile registered in this state, the department of justice shall within 24 hours mail to the owner, conditional sales vendor, mortgagee, or their assignee a notice showing the name and address of the lien claimant, the amount of the lien, the date of execution of the lien, and, in the case of attachment, the full title of the court, the action, and the name of the attorney for the plaintiff or the name of the attaching creditor, or both.

(16) It is not necessary to refile with the department of justice any instruments on file in the office of the county clerk and recorder on October 1, 1989.

(17) A fee of $4 must be paid to the department of justice

to file any security interest or other lien against a snowmobile. The $4 fee must cover the cost of filing a satisfaction or release of the security interest and the cost of entering the satisfaction or release on the records of the department of justice and deleting the endorsement of the security interest from the face of the certificate of ownership. A fee of $4 must be paid to the department of justice for issuing a certified copy of a certificate of ownership subject to a security interest or other lien on file with the department of justice or for filing an assignment of a security interest or other lien on file with the department of justice. All fees provided for in this section must be paid to the county treasurer for deposit in the general fund in accordance with 15-1-504."

Section 4. Section 23-2-811, MCA, is amended to read:

"**23-2-811. Certificate of ownership -- procedure -- fee -- filing security interest.** (1) No off-highway vehicle may be operated upon any public lands, trails, easements, lakes, rivers, or streams unless a certificate of ownership has first been obtained from the department of justice.

(2) The owner of an off-highway vehicle shall apply for a certificate of ownership to the county treasurer of the county in which the owner resides, on a form furnished by the department of justice for that purpose. The form must include:

(a) the name of the owner;

(b) the residence of the owner, by town and county;

(c) the business address or home mailing address of the owner;

(d) the name and address of any lienholder;

(e) the amount due under any contract, mortgage, or lien;

(f) the name of the manufacturer;

(g) the model number or name;

(h) the identification number; and

(i) the name and address of the dealer or other person from whom the off-highway vehicle was acquired.

(3) The application must be signed by at least one owner or by a properly authorized agent of the owner.

(4) The application for a new certificate of ownership must be accompanied by the immediately previous certificate. This subsection does not apply to off-highway vehicles that are purchased as new and unused machines or that were operated before January 1, 1990.

(5) (a) After the owner completes the application form, the county treasurer shall issue to the applicant two copies of the completed application, with one marked "file copy", and shall forward one copy and the original application to the department of justice. The department of justice shall enter the information contained in the application upon the corresponding records of its office and shall send the applicant a certificate of ownership containing a permanent ownership number and information from the application considered necessary by the department of justice.

(b) The certificate of ownership is not required to be renewed annually and is valid as long as the person holding it owns the off-highway vehicle.

(6) The owner shall at all times retain possession of the certificate of ownership, except when it is being transmitted to and from the department of justice for endorsement or cancellation.

(7) Upon application for a certificate of ownership, a fee of ~~$4~~ $5 must be paid to the county treasurer, of which:

(a) ~~$3~~ $3.50 must be forwarded to the department of justice for deposit in the general fund; and

(b) ~~$1~~ $1.50 must be retained by the county treasurer for the cost of administering this section.

(8) A security interest in an off-highway vehicle is not valid against creditors, subsequent purchasers, or encumbrancers unless a lien notice, showing that a security interest has been created, has been perfected as provided in this section on a form approved by the department of justice. The department of justice may not file a security interest or other lien unless it is accompanied by or specified in the application for a certificate of ownership of the encumbered off-highway vehicle. If the lien notice is transmitted to the department of justice, the security agreement or other lien instrument that creates the security interest must be retained by the secured party. A copy of the security agreement is sufficient as a lien notice if it contains the name and address of the debtor and the secured party, a complete description of the off-highway vehicle, the amount of the lien, and the signature of the debtor. The department of justice shall file the security interest or lien by entering the name and address of the secured party upon the face of the certificate of ownership. The department of justice shall mail a statement certifying the filing of a security interest or lien to the secured party. The department of justice shall mail the certificate of ownership to the owner at the address given on the certificate. However, if the transfer of ownership and filing of the security interest are paid for by a creditor or secured party, the department of justice shall return the certificate of ownership to the county treasurer of the county where the vehicle is to be registered. The owner of an off-highway vehicle is the person entitled to operate and possess the vehicle.

(9) A security interest in an off-highway vehicle held as inventory by a dealer must be perfected in accordance with Title 30, chapter 9, and no endorsement on the certificate of title is necessary for perfection.

(10) Whenever a security interest or lien is filed against an off-highway vehicle that is subject to two or more security interests previously perfected under this section, the department of justice shall endorse on the face of the certificate of ownership: "Notice. This off-highway vehicle is subject to additional security interests on file with the Department of Justice." Other information regarding the additional security interests need not be endorsed on the certificate.

(11) Satisfaction or statements of release filed with the department of justice under this section must be retained for a period of 8 years from the date of receipt, after which they may be destroyed.

(12) A security interest or other lien as provided in this section is perfected on the date the lien notice is delivered to

the county treasurer. On that date, the county treasurer shall issue to the secured party a receipt evidencing the perfection. Perfection under this section constitutes constructive notice to subsequent purchasers or encumbrancers, from the date of delivery of the lien notice to the county treasurer, of the existence of the security interest.

(13) Upon default under a chattel mortgage or conditional sales contract covering an off-highway vehicle, the mortgagee or vendor has the same remedies as in the case of other personal property. In the case of attachment of an off-highway vehicle, the provisions of 27-18-413, 27-18-414, and 27-18-804 are applicable, except that deposits must be made with the department of justice.

(14) A conditional sales vendor, chattel mortgagee, or assignee who fails to file a satisfaction of a chattel mortgage, assignment, or conditional sale contract within 15 days after receiving final payment shall pay to the department of justice the sum of $1 for each day after the expiration of the 15-day period that he fails to file the satisfaction.

(15) Upon receipt of any liens, notices of liens dependent on possession, or attachments against the record of an off-highway vehicle in this state, the department of justice shall within 24 hours mail to the owner, conditional sales vendor, mortgagee, or their assignee a notice of the lien, showing the date of execution of the lien and, in the case of attachment, the full title of the court, the action, and the name of the attorney for the plaintiff or the name of the attaching creditor, or both.

(16) It is not necessary to refile with the department of justice instruments on file in the offices of the county clerk and recorders at the time this law takes effect.

(17) A fee of $4 must be paid to the department of justice to file a security interest or other lien against an off-highway vehicle. The $4 fee includes and covers the cost of filing a satisfaction or release of the security interest and also the cost of entering the satisfaction or release on the records of the department and deleting the endorsement of the security interest from the face of the certificate of ownership. A fee of $4 must be paid to the department for issuing a certified copy of a certificate of ownership subject to a security interest or other lien on file in the office of the department, or for filing an assignment of a security interest or other lien on file with the department. All fees provided for in this section must be paid to the county treasurer for deposit in the state general fund in accordance with 15-1-504.""

SENATE STANDING COMMITTEE REPORT

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration House Bill No. 209 (third reading copy -- blue), respectfully report that House Bill No. 209 be amended and as so amended be concurred in:

1. Title, line 5.
Following: "VEHICLE"
Insert: ", BOAT, SNOWMOBILE, OR OFF-HIGHWAY VEHICLE"

2. Title, line 7.
Strike: "SECTION"
Insert: "SECTIONS 23-2-508, 23-2-611, 23-2-811, AND"

3. Page 3, line 12.
Following: "notice"
Strike: "is"
Insert: "and the certificate of ownership or manufacturer's statement of origin are"

4. Page 3, line 20.
Following: line 19
Insert: "(6) Security interests or other lien filings that do not require transfer of ownership are perfected when received by the department. On that date, the department shall issue to the secured party a receipt evidencing the perfection. Perfection under this subsection constitutes constructive notice to subsequent purchasers or encumbrancers, from the date the lien notice is delivered to the department, of the existence of the security interest."
Renumber: subsequent subsections

5. Page 5, line 12.
Insert: "Section 2. Section 23-2-508, MCA, is amended to read:

"23-2-508. Certificate of ownership -- filing of security interests. (1) Except as provided in subsection (9), a motorboat or sailboat 12 feet in length or longer may not be operated upon the waters of the state unless a certificate of ownership has first been obtained from the department of justice in accordance with the laws of this state.

(2) The owner of a motorboat or sailboat 12 feet in length or longer shall apply for a certificate of ownership and a certificate of number with the county treasurer of the county in which the owner resides, upon forms furnished by the department of justice. The forms must require the following information:

(a) name of the owner;
(b) residence of the owner, by town or county;
(c) business or home address of the owner;
(d) name and address of any lienholder;

(e) amount due under any contract or lien;
(f) name of the manufacturer;
(g) model number or name;
(h) identification number;
(i) name and address of the dealer or other person from whom acquired, if known; and
(j) such other information as the department of justice may require.

(3) The application is to be accompanied by documentation of ownership, such as an invoice, bill of sale, foreign title, official certificate of boat number, fee in lieu of tax receipt, or a certificate of ownership of a trailer purchased with the motorboat or sailboat. An applicant who fails to provide such proof of ownership shall provide a certified statement describing how the motorboat or sailboat 12 feet in length or longer was acquired, from whom acquired if known, and other information requested by the department of justice.

(4) If a certificate of ownership has previously been issued under the provisions of this part, the application for a new certificate must be accompanied by the immediately previous certificate. This subsection does not apply to motorboats or sailboats 12 feet in length or longer that are purchased as new and unused vessels or that were operated when the provisions of this part were not in force and effect.

(5) Any motorboat or sailboat 12 feet in length or longer that does not have a manufacturer's or other identifying number thereon must be assigned an identification number by the department of fish, wildlife, and parks. A fee of $1 must be paid to the department for an assignment of number.

(6) Upon completion of the application, the county treasurer shall issue to the applicant two copies of the certificate of number application, one of which must be marked "file copy". The treasurer shall forward one copy and the original application for a certificate of ownership to the department of justice, which shall enter the information contained in the application upon the corresponding records of its office, and shall furnish the applicant a certificate of ownership containing that information in the application considered necessary by the department and a permanent boat number. The certificate of ownership need not be renewed annually and is valid as long as the person holding it owns the vessel.

(7) The owner shall at all times retain possession of the certificate of ownership, except when it is being transmitted to and from the department of justice for endorsement or cancellation.

(8) Upon application for a certificate of ownership, a fee of $5 must be paid to the county treasurer, $3.50 of which must be forwarded by the county treasurer to the department of justice and deposited in the general fund.

(9) A person who, on July 1, 1988, is the owner of a motorboat or sailboat 12 feet in length or longer with a valid certificate of number issued by the state is not required to file an application for a certificate of ownership for the motorboat or sailboat unless he transfers a part of his interest in the motorboat or sailboat or he renews the certificate of number for the motorboat or sailboat.

(10) A security interest in a boat is not valid as against creditors, subsequent purchasers, or encumbrancers unless a lien notice, showing that a security interest has been created, has been ~~filed with the department of justice~~ perfected as provided in this section. The lien notice must be filed on a form approved by the department [of justice]. The department of justice may not file a security interest or other lien unless it is accompanied by or specified in the application for a certificate of ownership of the boat encumbered. If the lien notice is transmitted to the department of justice, the security agreement or other lien instrument that creates the security interest must be retained by the secured party. A copy of the security agreement is sufficient as a lien notice if it contains the name and address of the debtor and the secured party, the complete boat description, the amount of the lien, and the signature of the debtor. The department of justice shall file the security interest or lien by entering the name and address of the secured party upon the face of the certificate of ownership. The department of justice shall mail a statement certifying the filing of a security interest or lien to the secured party. The department of justice shall mail the certificate of ownership to the owner at the address given on the certificate; however, if the transfer of ownership and filing of the security interest are paid for by a creditor or secured party, the department of justice shall return the certificate of ownership to the county treasurer of the county where the boat is to be registered. The owner of a boat is the person entitled to operate and possess the boat.

(11) A security interest in a boat held as inventory by a dealer must be perfected in accordance with Title 30, chapter 9, and no endorsement on the certificate of title is necessary for perfection.

(12) Whenever a security interest or lien is filed against a boat that is subject to two security interests previously perfected ~~by filing~~ under this section, the department of justice shall endorse on the face of the certificate of ownership: "NOTICE. This boat is subject to additional security interest on file with the Department of Justice." No other information

regarding the additional security interests need be endorsed on the certificate.

(13) Satisfactions or statements of release filed with the department of justice under this part must be retained for a period of 8 years after receipt, after which they may be destroyed.

(14) ~~The filing of a~~ A security interest or other lien as ~~herein~~ provided in this section ~~perfects a security interest that has attached at the time the certificate of ownership noting the interest is issued~~ is perfected on the date the lien notice is delivered to the county treasurer. On that date, the county treasurer shall issue to the secured party a receipt evidencing the perfection. ~~Issuance of a certificate of ownership~~ Perfection under this section constitutes constructive notice to subsequent purchasers or encumbrancers, from the ~~time of filing~~ date of delivery of the lien notice to the county treasurer, of the existence of the security interest.

(15) Upon default under a chattel mortgage or conditional sales contract covering a boat, the mortgagee or vendor has the same remedies as in the case of other personal property. In case of attachment of a boat all the provisions of 27-18-413, 27-18-414, and 27-18-804 are applicable, except that deposits must be made with the department of justice.

(16) A conditional sales vendor or chattel mortgagee or assignee who fails to file a satisfaction of a chattel mortgage, assignment, or conditional sales contract within 15 days after receiving final payment is required to pay the department of justice the sum of $1 for each day that he fails to file the satisfaction.

(17) Upon receipt of any liens, notice of liens dependent on possession, or attachments against the record of any boat registered in this state, the department of justice shall within 24 hours mail to the owner, conditional sales vendor, mortgagee, or their assignee a notice showing the name and address of the lien claimant, the amount of the lien, the date of execution of the lien, and, in the case of attachment, the full title of the court, the action, and the name of the attorney for the plaintiff or the name of the attaching creditor, or both.

(18) It is not necessary to refile with the department of justice any instruments on file in the office of any county clerk and recorder on October 1, 1989.

(19) A fee of $4 must be paid to the department of justice to file any security interest or other lien against a boat. The $4 fee must cover the cost of filing a satisfaction or release of the security interest and the cost of entering the satisfaction or release on the records of the department of justice and deleting the endorsement of the security interest from the face of the certificate of ownership. A fee of $4 must be paid to the

department of justice for issuing a certified copy of a certificate of ownership subject to a security interest or other lien on file with the department of justice or for filing an assignment of any security interest or other lien on file with the department of justice. All fees provided for in this section must be paid to the county treasurer for deposit in the general fund in accordance with 15-1-504."

Section 3. Section 23-2-611, MCA, is amended to read:

"23-2-611. Certificate of ownership -- filing of security interests. (1) A snowmobile may not be operated upon any public lands, trails, easements, lakes, rivers, streams, roadways or shoulders of roadways, streets, or highways unless a certificate of ownership has first been obtained from the department of justice in accordance with the laws of this state.

(2) The owner of a snowmobile shall apply for a certificate of ownership with the county treasurer of the county in which the owner resides, upon forms to be furnished for this purpose. The forms must require the following information:

(a) name of the owner;
(b) residence of the owner, by town and county;
(c) business or home mail address of the owner;
(d) name and address of any lienholder;
(e) amount due under any contract or lien;
(f) name of the manufacturer;
(g) model number or name;
(h) identification number; and
(i) name and address of the dealer or other person from whom acquired.

(3) The application must be signed by at least one owner or by a properly authorized officer or representative of the owner.

(4) If a certificate of ownership has previously been issued under the provisions of 23-2-601 through 23-2-644, the application for a new certificate must be accompanied by the immediately previous certificate. This subsection does not apply to snowmobiles that are purchased as new and unused machines or that were operated when the provisions of 23-2-601 through 23-2-644 were not in force and effect.

(5) Upon completion of the application, on forms furnished by the department of justice, the county treasurer shall issue to the applicant two copies of the application, one of which shall be marked "file copy". The treasurer shall forward one copy and the original application to the department of justice, which shall enter the information contained in the application upon the corresponding records of its office and shall furnish the applicant a certificate of ownership, which shall contain that information in the application considered necessary by the department of justice, and a permanent ownership number. The

certificate of ownership is not to be renewed annually and is valid as long as the person holding it owns the snowmobile.

(6) The owner shall at all times retain possession of the certificate of ownership, except when it is being transmitted to and from the department of justice for endorsement or cancellation.

(7) Upon application for a certificate of ownership, a fee of $5 shall be paid to the county treasurer, $3.50 of which shall be forwarded by the county treasurer to the department of justice and deposited in the general fund.

(8) A security interest in a snowmobile is not valid as against creditors, subsequent purchasers, or encumbrancers unless a lien notice, showing that a security interest has been created, has been ~~filed with the department of justice~~ perfected as provided in this section. The lien notice must be filed on a form approved by the department ~~(~~of justice~~)~~. The department of justice may not file a security interest or other lien unless it is accompanied by or specified in the application for a certificate of ownership of the snowmobile encumbered. If the lien notice is transmitted to the department of justice, the security agreement or other lien instrument that creates the security interest must be retained by the secured party. A copy of the security agreement is sufficient as a lien notice if it contains the name and address of the debtor and the secured party, the complete snowmobile description, the amount of the lien, and the signature of the debtor. The department of justice shall file the security interest or lien by entering the name and address of the secured party upon the face of the certificate of ownership. The department of justice shall mail a statement certifying the filing of a security interest or lien to the secured party. The department of justice shall mail the certificate of ownership to the owner at the address given on the certificate; however, if the transfer of ownership and filing of the security interest are paid for by a creditor or secured party, the department of justice shall return the certificate of ownership to the county treasurer of the county where the snowmobile is to be registered. The owner of a snowmobile is the person entitled to operate and possess the snowmobile.

(9) A security interest in a snowmobile held as inventory by a dealer must be perfected in accordance with Title 30, chapter 9, and no endorsement on the certificate of title is necessary for perfection.

(10) Whenever a security interest or lien is filed against a snowmobile that is subject to two security interests previously perfected ~~by filing~~ under this section, the department of justice shall endorse on the face of the certificate of ownership: "NOTICE. This snowmobile is subject to additional security interest on file with the Department of Justice". No other

information regarding the additional security interests need be endorsed on the certificate.

(11) Satisfactions or statements of release filed with the department of justice under this part must be retained for a period of 8 years after receipt, after which they may be destroyed.

(12) ~~The filing of a~~ A security interest or other lien as ~~herein~~ provided in this section ~~perfects a security interest that has attached at the time the certificate of ownership noting the interest is issued~~ is perfected on the date the lien notice is delivered to the county treasurer. On that date, the county treasurer shall issue to the secured party a receipt evidencing the perfection. ~~Issuance of a certificate of ownership~~ Perfection under this section constitutes constructive notice to subsequent purchasers or encumbrancers, from the ~~time of filing~~ date of delivery of the lien notice to the county treasurer, of the existence of the security interest.

(13) Upon default under a chattel mortgage or conditional sales contract covering a snowmobile, the mortgagee or vendor has the same remedies as in the case of other personal property. In case of attachment of a snowmobile all the provisions of 27-18-413, 27-18-414, and 27-18-804 are applicable, except that deposits must be made with the department of justice.

(14) A conditional sales vendor or chattel mortgagee or assignee who fails to file a satisfaction of a chattel mortgage, assignment, or conditional sales contract within 15 days after receiving final payment is required to pay the department of justice the sum of $1 for each day that he fails to file the satisfaction.

(15) Upon receipt of any liens, notice of liens dependent on possession, or attachments against the record of any snowmobile registered in this state, the department of justice shall within 24 hours mail to the owner, conditional sales vendor, mortgagee, or their assignee a notice showing the name and address of the lien claimant, the amount of the lien, the date of execution of the lien, and, in the case of attachment, the full title of the court, the action, and the name of the attorney for the plaintiff or the name of the attaching creditor, or both.

(16) It is not necessary to refile with the department of justice any instruments on file in the office of the county clerk and recorder on October 1, 1989.

(17) A fee of $4 must be paid to the department of justice to file any security interest or other lien against a snowmobile. The $4 fee must cover the cost of filing a satisfaction or release of the security interest and the cost of entering the satisfaction or release on the records of the department of justice and deleting the endorsement of the security interest from the face of the certificate of ownership. A fee of $4 must

be paid to the department of justice for issuing a certified copy of a certificate of ownership subject to a security interest or other lien on file with the department of justice or for filing an assignment of a security interest or other lien on file with the department of justice. All fees provided for in this section must be paid to the county treasurer for deposit in the general fund in accordance with 15-1-504."

Section 4. Section 23-2-811, MCA, is amended to read:

"23-2-811. Certificate of ownership -- procedure -- fee -- filing security interest. (1) No off-highway vehicle may be operated upon any public lands, trails, easements, lakes, rivers, or streams unless a certificate of ownership has first been obtained from the department of justice.

(2) The owner of an off-highway vehicle shall apply for a certificate of ownership to the county treasurer of the county in which the owner resides, on a form furnished by the department of justice for that purpose. The form must include:

(a) the name of the owner;

(b) the residence of the owner, by town and county;

(c) the business address or home mailing address of the owner;

(d) the name and address of any lienholder;

(e) the amount due under any contract, mortgage, or lien;

(f) the name of the manufacturer;

(g) the model number or name;

(h) the identification number; and

(i) the name and address of the dealer or other person from whom the off-highway vehicle was acquired.

(3) The application must be signed by at least one owner or by a properly authorized agent of the owner.

(4) The application for a new certificate of ownership must be accompanied by the immediately previous certificate. This subsection does not apply to off-highway vehicles that are purchased as new and unused machines or that were operated before January 1, 1990.

(5) (a) After the owner completes the application form, the county treasurer shall issue to the applicant two copies of the completed application, with one marked "file copy", and shall forward one copy and the original application to the department of justice. The department of justice shall enter the information contained in the application upon the corresponding records of its office and shall send the applicant a certificate of ownership containing a permanent ownership number and information from the application considered necessary by the department of justice.

(b) The certificate of ownership is not required to be renewed annually and is valid as long as the person holding it owns the off-highway vehicle.

(6) The owner shall at all times retain possession of the certificate of ownership, except when it is being transmitted to and from the department of justice for endorsement or cancellation.

(7) Upon application for a certificate of ownership, a fee of ~~$4~~ $5 must be paid to the county treasurer, of which:

(a) ~~$3~~ $3.50 must be forwarded to the department of justice for deposit in the general fund; and

(b) ~~$1~~ $1.50 must be retained by the county treasurer for the cost of administering this section.

(8) A security interest in an off-highway vehicle is not valid against creditors, subsequent purchasers, or encumbrancers unless a lien notice, showing that a security interest has been created, has been perfected as provided in this section on a form approved by the department of justice. The department of justice may not file a security interest or other lien unless it is accompanied by or specified in the application for a certificate of ownership of the encumbered off-highway vehicle. If the lien notice is transmitted to the department of justice, the security agreement or other lien instrument that creates the security interest must be retained by the secured party. A copy of the security agreement is sufficient as a lien notice if it contains the name and address of the debtor and the secured party, a complete description of the off-highway vehicle, the amount of the lien, and the signature of the debtor. The department of justice shall file the security interest or lien by entering the name and address of the secured party upon the face of the certificate of ownership. The department of justice shall mail a statement certifying the filing of a security interest or lien to the secured party. The department of justice shall mail the certificate of ownership to the owner at the address given on the certificate. However, if the transfer of ownership and filing of the security interest are paid for by a creditor or secured party, the department of justice shall return the certificate of ownership to the county treasurer of the county where the vehicle is to be registered. The owner of an off-highway vehicle is the person entitled to operate and possess the vehicle.

(9) A security interest in an off-highway vehicle held as inventory by a dealer must be perfected in accordance with Title 30, chapter 9, and no endorsement on the certificate of title is necessary for perfection.

(10) Whenever a security interest or lien is filed against an off-highway vehicle that is subject to two or more security interests previously perfected under this section, the department of justice shall endorse on the face of the certificate of

ownership: "Notice. This off-highway vehicle is subject to additional security interests on file with the Department of Justice." Other information regarding the additional security interests need not be endorsed on the certificate.

(11) Satisfaction or statements of release filed with the department of justice under this section must be retained for a period of 8 years from the date of receipt, after which they may be destroyed.

(12) A security interest or other lien is perfected as provided in this section on the date the lien notice is delivered to the county treasurer. On that date, the county treasurer shall issue to the secured party a receipt evidencing the perfection. Perfection under this section constitutes constructive notice to subsequent purchasers or encumbrancers, from the date of delivery of the lien notice to the county treasurer, of the existence of the security interest.

(13) Upon default under a chattel mortgage or conditional sales contract covering an off-highway vehicle, the mortgagee or vendor has the same remedies as in the case of other personal property. In the case of attachment of an off-highway vehicle, the provisions of 27-18-413, 27-18-414, and 27-18-804 are applicable, except that deposits must be made with the department of justice.

(14) A conditional sales vendor, chattel mortgagee, or assignee who fails to file a satisfaction of a chattel mortgage, assignment, or conditional sale contract within 15 days after receiving final payment shall pay to the department of justice the sum of $1 for each day after the expiration of the 15-day period that he fails to file the satisfaction.

(15) Upon receipt of any liens, notices of liens dependent on possession, or attachments against the record of an off-highway vehicle in this state, the department of justice shall within 24 hours mail to the owner, conditional sales vendor, mortgagee, or their assignee a notice of the lien, showing the date of execution of the lien and, in the case of attachment, the full title of the court, the action, and the name of the attorney for the plaintiff or the name of the attaching creditor, or both.

(16) It is not necessary to refile with the department of justice instruments on file in the offices of the county clerk and recorders at the time this law takes effect.

(17) A fee of $4 must be paid to the department of justice to file a security interest or other lien against an off-highway vehicle. The $4 fee includes and covers the cost of filing a satisfaction or release of the security interest and also the cost of entering the satisfaction or release on the records of the department of justice and deleting the endorsement of the security interest from the face of the certificate of ownership. A fee of $4 must be paid to the department of justice for issuing

a certified copy of a certificate of ownership subject to a security interest or other lien on file in the office of the department of justice or for filing an assignment of a security interest or other lien on file with the department of justice. All fees provided for in this section must be paid to the county treasurer for deposit in the state general fund in accordance with 15-1-504.""

Signed: _____
John "J.D." Lynch, Chairman

3-18-91
Mad. Coord.

3/18 2:25
Sec. of Senate